

¹ All dates are 2012 unless otherwise indicated.

3. Plaintiff was a “no call, no show” at the Court’s January 25 Case Management Conference. Plaintiff had not requested a continuance of the Case Management Conference, but simply failed to appear.

4. The Court’s Minute Entry of the January 25 Case Management Conference directed Plaintiff to file the consent election form, originally due on January 11, by February 3. (A copy of the Minute Entry is attached as Exhibit 2). Plaintiff again ignored the Court’s Order and has not yet filed the consent election form.

5. The Court’s Minute Entry of the January 25 Case Management Conference also directed mediation as the agreed upon form of Alternative Dispute Resolution.

6. Counsel for Defendant’s efforts to reach Plaintiff for the purpose of scheduling the mediation have been ignored. (A copy of relevant communications is attached as Exhibit 3).

7. The parties’ jointly filed a Rule 26(f) Report requiring the exchange of Initial Disclosures by February 10. Counsel for Defendant timely served its Initial Disclosures upon counsel for Plaintiff. Plaintiff has not yet served Initial Disclosures and did not request an extension of time to do so.

8. Defendant served Plaintiff with its First Request for Production of Documents on January 10. The discovery requests were timed so that Defendant would have responsive documents in advance of Plaintiff’s scheduled February 24 deposition.

9. Plaintiff failed to respond at all to Defendant’s Request for Production, failed to seek any extension of time to do so, and ignored Defendant’s attempt to determine the status of Plaintiff’s responses. (A copy of Defendant’s February 15 letter, following up on its February 10 letter, is attached as Exhibit 4).

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10. Defendant therefore has been forced to cancel Plaintiff's deposition as well.

11. As the above demonstrates, Plaintiff has willfully failed to comply both with this Court's Orders and applicable litigation deadlines.

12. As the above also demonstrates, Defendant has in good faith attempted to confer with counsel for Plaintiff in an effort to avert Court intervention.

WHEREFORE, Defendant respectfully requests that the Court issue an Order dismissing Plaintiff's Complaint in its entirety, with prejudice. Defendant further requests that the Court award reasonable expenses incurred by it in connection with preparing this Motion to Dismiss, including its attorneys' fees, and that the Court order such other sanctions as it deems appropriate.

Respectfully submitted,

Of Counsel:

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Counsel for Defendant,
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Dated: February 21, 2012

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Defendant's Motion to Dismiss for Plaintiff's Failure to Comply With Court Orders and Deadlines has been served upon counsel of record by the Court's ECF system, this 21st day of February, 2012, addressed as follows:

Joshua Smith, Esq.
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/s/Robert F. Prorok
Counsel for Defendant